

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN SENATE AUGUST 17, 2011

AMENDED IN SENATE JULY 1, 2011

AMENDED IN SENATE MAY 11, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 24, 2011

## SENATE BILL

**No. 921**

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**Introduced by Senators Lieu and Correa**

February 18, 2011

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An act to add ~~Article 2.5 (commencing with Section 150)~~ to Chapter 2 of Part 1 of Division 2 of Sections 55, 56, and 57 to the Military and Veterans Code, relating to the Military Department, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

SB 921, as amended, Lieu. Military Department: Office of the Inspector General: *California Military Whistleblower Protection Act*.

Existing law establishes in state government the Military Department, which includes the office of the Adjutant General, the State Military Reserve, the California Cadet ~~Corp~~ *Corps*, and the Naval Militia. There is also, within the Military Department, the ~~Office of the State Military Department Inspector General~~. The State Military Department Inspector General *inspector general*, an office that inspects, audits, investigates, trains, and performs various duties necessary to support the mission of the Military Department.

~~This bill would require the State Military Department Inspector General to become independent of the chain of command of the Military Department, as specified. This bill would require the Governor to appoint establish specified requirements for the position of California's inspector general, including, among others, a requirement that the Governor appoint the inspector general, subject to Senate confirmation. This bill would specify the duties of the State California Military Department Inspector General, and would require the inspector general to continue to maintain a toll-free public telephone number and Internet Web site to receive these complaints and allegations. This bill would also require that disciplinary action be brought against a state officer or employee who intentionally retaliates against a person who made a complaint or allegation of wrongdoing to the State Military Department Inspector General, as provided, and would specify that these officers and employees may be liable for civil damages for these same actions. This bill would authorize the inspector general to investigate specified complaints and allegations of misconduct upon written request of specified persons, and would provide that those requests are not a public record under the California Public Records Act.~~

~~This bill would require the inspector general to continue to investigate specified complaints and allegations of misconduct upon written request of specified persons and would provide that those requests are not a public record under the California Public Records Act.~~

~~This bill would establish the California Military Whistleblower Protection Act, which would prohibit a person from restricting a member of the Military Department from making specified communications to a Member of Congress, the Governor, a Member of the Legislature, or any state or federal inspector general, or from taking, or threatening to take, unfavorable personnel actions, or withholding, or threatening to withhold, favorable personnel actions, as a reprisal against a member of the Military Department for making specified communications. This bill would require the California Military Department Inspector General to take specified actions if a member of the Military Department makes allegations that a prohibited personnel action has been taken, or has been threatened to be taken, as provided.~~

~~This bill would require the Military Department to provide one training per year to the department's civil service employees regarding the role and responsibility of the California Military Department Inspector General and their rights under the California Whistleblower~~

*Protection Act, the California Military Whistleblower Protection Act, and any other relevant state or federal law.*

The California Constitution requires that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*

3     *(a) The Governor is the commander and chief of the state militia.*

4     *(b) The Military Department includes the office of the Adjutant*  
5     *General, the California National Guard, the State Military Reserve,*  
6     *the California Cadet Corps, and the Naval Militia.*

7     *(c) Within the Military Department, there currently exists an*  
8     *inspector general, who inspects, audits, investigates, trains, and*  
9     *performs various duties necessary to support command functions*  
10    *and the mission of the department.*

11    *(d) The California Military Department Inspector General and*  
12    *the California Military Whistleblower Protection Act are intended*  
13    *to mirror federal law and regulations that govern federal inspector*  
14    *generals, specifically the Federal Inspector General Act of 1978*  
15    *and the federal Military Whistleblower Protection Act. Members*  
16    *of the Military Department should be free to communicate and*  
17    *report waste, fraud, abuse of authority, violations of law, or threats*  
18    *to the public health and safety without fear of retribution.*

19    *(e) Public servants best serve the citizenry when they can be*  
20    *candid and honest without reservation in conducting the people's*  
21    *business.*

22    *SEC. 2. Section 55 is added to the Military and Veterans Code,*  
23    *to read:*

24    55. (a) *The position of inspector general shall satisfy all of*  
25    *the following requirements:*

1     (1) *Be appointed by the Governor, with consideration of the*  
2 *recommendation of the Adjutant General, and shall serve at the*  
3 *discretion of the Governor.*

4     (2) *Meet the same qualifications established in this code for the*  
5 *Assistant Adjutant General.*

6     (3) *Be subordinate to the Adjutant General and serve on state*  
7 *active duty at the grade of O-6 or higher.*

8     (b) *The inspector general may not serve as the Adjutant General*  
9 *or the Assistant Adjutant General for four years from the date of*  
10 *leaving the position of inspector general.*

11     (c) *The department shall, from the amount annually*  
12 *appropriated to it for purposes of this office, continue to fund the*  
13 *position of inspector general.*

14     (d) *The inspector general shall have access to all employees*  
15 *and documents of the department.*

16     (e) *The inspector general may receive communications from*  
17 *any person, including, but not limited to, any member of the*  
18 *department.*

19     (f) *The inspector general shall, at a minimum, continue to*  
20 *perform the functions of inspections, assistance, investigations,*  
21 *and teaching and training. The functions of the inspector general*  
22 *shall be performed in accordance with applicable service laws,*  
23 *rules, and regulations governing federal inspectors general.*

24     (g) *The inspector general shall continue to maintain a toll-free*  
25 *public telephone number and an Internet Web site to receive*  
26 *complaints and allegations, including, but not limited to, those*  
27 *described in subdivision (h) or the State Military Whistleblower*  
28 *Protection Act. The inspector general shall continue to post the*  
29 *telephone number and Internet Web site in clear view at every*  
30 *California National Guard armory, flight facility, airfield, or*  
31 *installation.*

32     (h) (1) *At the discretion of the inspector general or the Adjutant*  
33 *General, or upon a written request by the Governor, a Member of*  
34 *the Legislature, any member of the department, or any member of*  
35 *the public, the inspector general may investigate any complaint*  
36 *or allegation regarding the following:*

37         (A) *A violation of law, including, but not limited to, regulations,*  
38 *the Uniform Code of Military Justice, and any law prohibiting*  
39 *sexual harassment or unlawful discrimination.*

1     (B) *Gross mismanagement, a gross waste of funds, an abuse of*  
2 *authority, or a substantial and specified danger to the public health*  
3 *or safety.*

4     (2) *If the inspector general conducts an investigation at the*  
5 *request of a Member of the Legislature, the inspector general shall*  
6 *submit to that member a report of his or her findings of that*  
7 *investigation. The report shall contain only information that may*  
8 *be lawfully disclosed, and shall contain, at a minimum, information*  
9 *regarding whether the complaint or allegations were unfounded*  
10 *or sustained.*

11     (3) (A) *A request described in paragraph (1) is not a public*  
12 *record and is not subject to disclosure under the California Public*  
13 *Records Act set forth in Chapter 3.5 (commencing with Section*  
14 *6250) of Division 7 of Title 1 of the Government Code.*

15     (B) *The inspector general shall not disclose to any person or*  
16 *entity the identity of a person making a written request or an*  
17 *allegation or complaint described in paragraph (1), unless the*  
18 *person making the request, allegation, or complaint has consented*  
19 *to the disclosure in writing.*

20     (4) (A) *When deemed appropriate by the inspector general, the*  
21 *inspector general may refer to the Chief of the National Guard*  
22 *Bureau any complaints or allegations described in paragraph (1),*  
23 *any violations of the Uniform Code of Military Justice, or any*  
24 *violations of any other state or federal law.*

25     (B) *When deemed appropriate by the inspector general, the*  
26 *inspector general may refer to the State Auditor any complaints*  
27 *or allegations described in subparagraph (B) of paragraph (1) or*  
28 *any violation of state or federal law.*

29     (i) *If the inspector general receives, or becomes aware of, an*  
30 *allegation, complaint, or misconduct regarding the Adjutant*  
31 *General or the Assistant Adjutant General, the inspector general*  
32 *shall immediately refer the matter to the Chief of the National*  
33 *Guard Bureau and the Governor for review. The inspector general,*  
34 *by order of the Governor, shall conduct an investigation regarding*  
35 *the allegations concerning the Adjutant General or the Assistant*  
36 *Adjutant General concurrently with any federal investigation where*  
37 *appropriate. The inspector general shall report the findings to the*  
38 *Governor under this subdivision.*

39     (j) (1) *The inspector general shall, on or before July 1, 2013,*  
40 *and on or before July 1 each year thereafter, submit a report to*

1 the Governor and the Legislature. The report shall include, but  
2 not be limited to, a description of significant problems discovered  
3 by the office and a summary of investigations conducted by the  
4 office during the previous year. Upon submitting the report to the  
5 Governor and the Legislature, the report shall be made available  
6 to the public and posted on the office's Internet Web site.

7 (2) A report to be submitted pursuant to paragraph (1) shall be  
8 submitted in compliance with Section 9795 of the Government  
9 Code.

10 (k) For purposes of this section, all of the following shall apply:

11 (1) "Department" means the Military Department.

12 (2) "Inspector general" means the California Military  
13 Department Inspector General.

14 (3) "Member of the department" means the Adjutant General,  
15 any person under the command of the Adjutant General, any person  
16 employed by the department, including, but not limited to, any  
17 service member or employee of the office of the Adjutant General,  
18 the California National Guard, the State Military Reserve, the  
19 California Cadet Corps, or the Naval Militia, any person on state  
20 active duty, any person with a state commission, or any civil service  
21 or part-time employee of the department.

22 (4) "Office" means the Office of the California Military  
23 Department Inspector General.

24 SEC. 3. Section 56 is added to the Military and Veterans Code,  
25 to read:

26 56. (a) This section shall be known, and may be cited, as the  
27 "California Military Whistleblower Protection Act."

28 (b) Notwithstanding any other law, a person shall not do any  
29 of the following:

30 (1) (A) Restrict a member of the department from  
31 communicating with a Member of Congress, the Governor, a  
32 Member of the Legislature, or any state or federal inspector  
33 general.

34 (B) Subparagraph (A) shall not apply to a communication that  
35 is unlawful.

36 (2) Take, or threaten to take, an unfavorable personnel action,  
37 or withhold, or threaten to withhold, a favorable personnel action,  
38 as a reprisal against a member of the department for making a  
39 communication to any person, including, but not limited to, any  
40 of the following:

1 (A) *A Member of Congress.*

2 (B) *The Governor.*

3 (C) *A Member of the Legislature.*

4 (D) *The inspector general.*

5 (E) *The State Auditor.*

6 (F) *A federal inspector general or any other inspector general*  
7 *appointed under the Inspector General Act of 1978.*

8 (G) *Any member of a Department of Defense audit, inspection,*  
9 *investigation, or law enforcement organization.*

10 (H) *Any local, state, or federal law enforcement agency.*

11 (I) *Any person or organization in the chain of command of the*  
12 *department.*

13 (J) *Any other person or organization designated pursuant to*  
14 *regulation or any other established administrative procedures for*  
15 *such communications.*

16 (c) *Notwithstanding any other law, if a member of the*  
17 *department submits to an inspector general an allegation that a*  
18 *personnel action prohibited by paragraph (2) of subdivision (b)*  
19 *has been taken or has been threatened to be taken against the*  
20 *member of the department, the inspector general shall take action*  
21 *as provided by subdivision (d).*

22 (d) *An inspector general receiving an allegation pursuant to*  
23 *subdivision (c) shall do all of the following:.*

24 (1) *Expediently determine whether there is sufficient evidence,*  
25 *in accordance with federal regulations governing federal*  
26 *inspectors general, to warrant an investigation of the allegation.*

27 (2) *Conduct a separate investigation of the information that the*  
28 *member making the allegation believes constitutes evidence of*  
29 *wrongdoing under both of the following circumstances:*

30 (A) *There has not been a previous investigation.*

31 (B) *There has been a previous investigation but the inspector*  
32 *general determines that the previous investigation was biased or*  
33 *otherwise inadequate.*

34 (3) *Upon determining that an investigation of an allegation is*  
35 *warranted, expeditiously investigate the allegation.*

36 (e) *If the inspector general is not outside the immediate chain*  
37 *of command of both the member submitting the allegation and the*  
38 *individual or individuals alleged to have taken a personnel action*  
39 *prohibited by paragraph (2) of subdivision (b), the inspector*

1 *general shall refer the allegation to the Chief of the National Guard*  
2 *Bureau and the Governor.*

3 *(f) (1) After completion of an investigation the inspector general*  
4 *shall submit a report on the results of the investigation to the*  
5 *Adjutant General and a copy of the report on the results of the*  
6 *investigation to the member of the department who made the*  
7 *allegation. The report shall be transmitted to the Adjutant General,*  
8 *and the copy of the report shall be transmitted to the member, not*  
9 *later than 30 days after the completion of the investigation.*

10 *(2) The report on the results of the investigation transmitted to*  
11 *the Adjutant General shall contain a thorough review of the facts*  
12 *and circumstances relevant to the allegation and the complaint or*  
13 *disclosure and shall include documents acquired during the course*  
14 *of the investigation, including summaries of interviews conducted.*  
15 *The report may include a recommendation as to the disposition of*  
16 *the complaint.*

17 *(3) Except for that information that is not required to be*  
18 *disclosed under the California Public Records Act (Chapter 3.5*  
19 *(commencing with Section 6250) of Division 7 of Title 1 of the*  
20 *Government Code, in the copy of the report transmitted to the*  
21 *member of the department the inspector general shall ensure the*  
22 *maximum disclosure of information that may be lawfully disclosed.*  
23 *The copy of the report need not, however, include summaries of*  
24 *interviews conducted, or any document acquired, during the course*  
25 *of the investigation. These items shall be transmitted to the member*  
26 *of the department, if the member requests the items, with the copy*  
27 *of the report or after the transmittal to the member of the copy of*  
28 *the report, regardless of whether the request for those items is*  
29 *made before or after the copy of the report is transmitted to the*  
30 *member.*

31 *(4) If, in the course of an investigation of an allegation under*  
32 *this section, the inspector general determines that it is not possible*  
33 *to submit the report required by this subdivision within 180 days*  
34 *after the date of receipt of the allegation being investigated, the*  
35 *inspector general shall provide to the Adjutant General and to the*  
36 *member making the allegation a notice of all of the following:*

37 *(A) The reasons why the report may not be submitted within*  
38 *that time.*

39 *(B) When the report will be submitted.*

1 (g) *Nothing in this article is intended to supersede the rights,*  
2 *benefits, processes, and procedures already afforded to members*  
3 *of the department under existing law.*

4 (h) *For purposes of this section, all of the following shall apply:*

5 (1) *A “communication” means any communication or report*  
6 *in which a member of the department complains of, or discloses*  
7 *information that the member of the department reasonably believes*  
8 *constitutes evidence of, any of the following:*

9 (A) *A violation of law, including, but not limited to, regulations,*  
10 *the Uniform Code of Military Justice, and any law prohibiting*  
11 *sexual harassment or unlawful discrimination.*

12 (B) *Gross mismanagement, a gross waste of funds, an abuse of*  
13 *authority, or a substantial and specified danger to the public health*  
14 *or safety.*

15 (2) *“Department” means the Military Department.*

16 (3) *“Inspector general” means the California Military*  
17 *Department Inspector General.*

18 (4) *“Member of the department” has the same meaning as*  
19 *defined in Section 55.*

20 (5) *“Office” means the Office of the California Military*  
21 *Department Inspector General.*

22 SEC. 4. *Section 57 is added to the Military and Veterans Code,*  
23 *to read:*

24 57. *The Military Department shall provide, at a minimum, one*  
25 *training per year to the department’s civil service employees*  
26 *regarding the role and responsibility of the California Military*  
27 *Department Inspector General and their rights under the California*  
28 *Whistleblower Protection Act, the Military Whistleblower*  
29 *Protection Act, and any other relevant state or federal law.*

30 SECTION 1. ~~The Legislature finds and declares both of the~~  
31 ~~following:~~

32 (a) ~~That there currently exists, within the State Military~~  
33 ~~Department, an Inspector General, who inspects, audits,~~  
34 ~~investigates, trains, and performs various duties necessary to~~  
35 ~~support the mission of the Military Department.~~

36 (b) ~~That it is not the intent of the Legislature, in enacting this~~  
37 ~~bill, to create a new Inspector General for the Military Department,~~  
38 ~~but to instead require that Inspector General, who is currently in~~  
39 ~~the chain of the command of the Military Department, to become~~  
40 ~~independent of that chain of command.~~

1     ~~SEC. 2.— Article 2.5 (commencing with Section 150) is added~~  
2     ~~to Chapter 2 of Part 1 of Division 2 of the Military and Veterans~~  
3     ~~Code, to read:~~

4  
5     ~~Article 2.5. State Military Department Inspector General~~  
6

7     ~~150.—For purposes of this article, the following terms have the~~  
8     ~~following meanings:~~

9     ~~(a) “Department” means the Military Department.~~

10    ~~(b) “Office” means the Office of the State Military Department~~  
11    ~~Inspector General.~~

12    ~~(c) “Inspector general” means the State Military Department~~  
13    ~~Inspector General.~~

14    ~~150.10.—(a) The inspector general, who is currently in the chain~~  
15    ~~of command of the Military Department, shall become independent~~  
16    ~~of that chain of command, and shall be appointed by the Governor~~  
17    ~~pursuant to subdivision (c).~~

18    ~~(b) The inspector general shall meet the same qualifications~~  
19    ~~established in this code for the Adjutant General.~~

20    ~~(c) (1) The Governor shall appoint the inspector general, subject~~  
21    ~~to confirmation by the Senate.~~

22    ~~(2) Upon confirmation by the Senate, the inspector general shall~~  
23    ~~serve at the discretion of the Governor.~~

24    ~~(3) The inspector general shall serve on state active duty at the~~  
25    ~~grade of O-6.~~

26    ~~150.11.—(a) The department shall, from the amount annually~~  
27    ~~appropriated to it for purposes of this office, continue to fund the~~  
28    ~~position of inspector general and provide the office space and~~  
29    ~~support personnel requested by the inspector general.~~

30    ~~(b) The inspector general shall have access to all employees~~  
31    ~~and documents of the department.~~

32    ~~150.12.—(a) The inspector general may receive communications~~  
33    ~~from any person, including, but not limited to, any member of the~~  
34    ~~California National Guard, the State Military Reserve, and the~~  
35    ~~Naval Militia.~~

36    ~~(b) The inspector general shall continue to maintain a toll-free~~  
37    ~~public telephone number to receive the complaints and allegations~~  
38    ~~described in subdivision (a) of Section 150.13. The inspector~~  
39    ~~general shall post this telephone number in clear view at every~~

1 ~~California National Guard armory, flight facility, airfield, or~~  
2 ~~installation.~~

3 ~~150.13. (a) At the discretion of the inspector general or, upon~~  
4 ~~a written request by the Governor, a member of the California~~  
5 ~~Legislature, the Adjutant General, or any member of the public,~~  
6 ~~the inspector general shall continue to investigate any of the~~  
7 ~~following:~~

8 ~~(1) Complaints that the Adjutant General or the Assistant~~  
9 ~~Adjutant General has engaged in discrimination or retaliation for~~  
10 ~~whistleblowing.~~

11 ~~(2) Allegations of misconduct by the Adjutant General or the~~  
12 ~~Assistant Adjutant General.~~

13 ~~(3) Allegations of misconduct by any member of the California~~  
14 ~~National Guard.~~

15 ~~(b) If the inspector general conducts an investigation at the~~  
16 ~~request of a member of the California Legislature, the inspector~~  
17 ~~general shall submit to that member a report of his or her findings~~  
18 ~~of that investigation.~~

19 ~~(c) (1) A request described in subdivision (a) is not a public~~  
20 ~~record and is not subject to disclosure under the California Public~~  
21 ~~Records Act set forth in Chapter 3.5 (commencing with Section~~  
22 ~~6250) of Division 7 of Title 1 of the Government Code.~~

23 ~~(2) The inspector general shall not disclose to any person or~~  
24 ~~entity the identity of a person making a written request or an~~  
25 ~~allegation or complaint described in subdivision (a), unless the~~  
26 ~~person making the request, allegation, or complaint has consented~~  
27 ~~to the disclosure in writing.~~

28 ~~(d) When deemed appropriate by the inspector general, the~~  
29 ~~inspector general shall refer to the federal Inspector General of the~~  
30 ~~Department of Defense any complaints and allegations pertaining~~  
31 ~~to violations of federal military laws or regulations.~~

32 ~~150.14. (a) Any state officer or employee who intentionally~~  
33 ~~engages in acts of reprisal, retaliation, threats, coercion, or similar~~  
34 ~~acts against an employee of any state department, board, or~~  
35 ~~authority for having disclosed what the employee, in good faith,~~  
36 ~~believed to be a complaint or allegation described in subdivision~~  
37 ~~(a) of Section 150.13 shall be disciplined by adverse action as~~  
38 ~~provided in subdivision (a) of Section 19574 of the Government~~  
39 ~~Code. If no adverse action is instituted by the appointing power,~~  
40 ~~the State Personnel Board shall take adverse action against the~~

1 officer or employee in the same manner as provided in Section  
2 19583.5 of the Government Code.

3 (b) In addition to all other causes of action, penalties, or other  
4 remedies provided by law, any state officer or employee who  
5 intentionally engages in acts of reprisal, retaliation, threats,  
6 coercion, or similar acts against an employee for having disclosed  
7 what the employee, in good faith, believed to be a complaint or  
8 allegation described in subdivision (a) of Section 150.13 shall be  
9 liable in an action for damages brought against him or her by the  
10 injured party. Punitive damages may be awarded by the court if  
11 the acts of the offending party are proven to be malicious. If  
12 liability has been established, the injured party also shall be entitled  
13 to reasonable attorney's fees as provided by law.

14 (c) For purposes of this section "state officer" includes, but is  
15 not limited to, a member of the Military Department on state active  
16 duty and any officer who holds a state commission or appointment  
17 by the Governor.

18 ~~SEC. 3.~~

19 *SEC. 5.* The Legislature finds and declares that Section 2 of  
20 this act, which adds Section 150.13 55 to the Military and Veterans  
21 Code, imposes a limitation on the public's right of access to the  
22 meetings of public bodies or the writings of public officials and  
23 agencies within the meaning of Section 3 of Article I of the  
24 California Constitution. Pursuant to that constitutional provision,  
25 the Legislature makes the following findings to demonstrate the  
26 interest protected by this limitation and the need for protecting  
27 that interest:

28 In order to protect the confidentiality of those persons making  
29 complaints or allegations, as authorized by this act, from any form  
30 of retaliation for having made the complaint or allegation, it is in  
31 the state's interest to limit public access to information.

32 ~~SEC. 4.~~

33 *SEC. 6.* This act is an urgency statute necessary for the  
34 immediate preservation of the public peace, health, or safety within  
35 the meaning of Article IV of the Constitution and shall go into  
36 immediate effect. The facts constituting the necessity are:

37 In order to ensure that Military Department personnel who are  
38 employed in state active duty, and thus are not under federal  
39 military oversight, as well as those subject to the control of these  
40 personnel, receive due process in the consideration of complaints

- 1 and appeals of disciplinary actions, it is necessary for this act to
- 2 take effect immediately.

O